IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

M.F.A.No.307 of 2000

I.C.NO.4/1995 OF THE EMPLOYEES INSURANCE COURT, IDUKKI
(INDUSTRIAL TRIBUNAL, IDUKKI)

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APPELLANT:APPLICANT:-

SEVANIKETHAN SOCIETY, CHERPUNKAL, PALA,
REPRESENTED BY ITS SECRETARY FR.GEORGE PAZHAYAPARAMBIL.

BY ADV. SRI.M.J.THOMAS

RESPONDENT: OPPOSITE PARTY:-

THE EMPLOYEES STATE INSURANCE CORPORATION,
PANCHADEEP BHAVAN, NORTH SWARAJ ROUND,
TRISSUR, REPRESENTED BY ITS REGIONAL DIRECTOR.

BY ADV.SRI.T.V.AJAYAKUMAR

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/03/2007, ALONG WITH M.F.A.NO.319 OF 2000, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Padmanabhan Nair,J.

M.F.A.Nos.307 of 2000-C &
319 of 2000

Dated, this the 23rd day of March, 2007

JUDGMENT

Sevanikethan Society, a firm, which according to the respondent is covered under the provisions of the Employees' State Insurance Act, is the appellant in these appeals. The respondent-Corporation held that the appellant is an establishment covered under the provisions of the E.S.I. Act and demanded contribution for the period from 1.4.1992 to 30.9.1993. For the subsequent period from 1.10.1993 to 31.3.1994, there was yet another demand. Challenging the demand made for the period from 1.4.1992 to 30.9.1993, the appellant filed I.C.No.1 of 1995. The demand for the subsequent period was challenged in I.C.No.4 of 1995. The main contention raised by the appellant in both these cases was that the appellant is a Society registered under the provisions of Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act and as such it is not liable to pay any contribution. It was further

contended that three persons had undertaken to make and supply furniture at specified rates and those three persons were contractors and the necessary workers were employed by those three contractors and, therefore, the appellant is not liable to pay contribution. It was also contended that at no point of time the appellant had engaged employees more than the statutory minimum and since the Society was providing training to unemployed persons and those trainees were not paid any wages or remuneration, the appellant is not liable to pay contribution. Overruling the objection raised by the appellant, the E.I. Court held that the appellant is liable to pay contribution. Challenging that order, these appeals are filed.

2. The E.I.Court found that any establishment if it engages more than the statutory minimum of employees, it is liable to pay contribution. The E.I.Court rejected the contention of the appellant that the workmen were engaged by the contractors and hence it is not liable. It was further found that more than the statutory minimum employees were working in the establishment and as such the appellant is liable to pay contribution. The finding of the E.I. Court that the three persons

who were described as contractors as well as their employees are to be treated as persons engaged by the appellant and treated as employees is correct. The contention that some of the workers are apprentices was also rejected in view of the specific provision contained in Section 2(9) of the E.S.I. Act. The apprentices were also covered by the provisions of the E.S.I. Act. So, the finding of the Regional Director as well as the E.I. Court that the establishment of the appellant is an establishment which is liable to pay contribution is a finding of fact based on good evidence.

3. The learned counsel appearing for the appellant submitted that the appellant was contending that it is not an establishment covered under the provisions of the E.S.I. Act and hence the appellant did not produce the registers showing payment of wages. It is also argued that the wages were fixed by the Regional Director on the ground that the appellant did not file any statement or produce any documents. It is submitted that the appellant being a charitable Society, an opportunity may be given to the appellant to prove the actual wages paid to the apprentices and also to the persons styled as contractors, so as to recalculate the contribution payable. The Regional Director as

well as the E.I. Court proceeded on the assumption that the quantum of contribution claimed is not disputed and that much amount was payable. It is true that there was no contest regarding the quantum of contribution. But, considering the fact that the appellant is a charitable Society, I am of the view that it is only just and proper that one more opportunity is given to the appellant to prove the actual wages paid by it by adducing proper documentary evidence before the Regional Director. For that purpose alone, the matter has to go back.

In the result, the appeals are allowed in part. The finding of the Regional Director as affirmed by the E.I. Court that the establishment run by the appellant is liable to pay contribution is confirmed. But, the quantum of contribution awarded by the Regional Director and affirmed by the E.I. Court are set aside and the matter is remanded to the Regional Director to give an opportunity to the appellant to adduce evidence as to the actual wages paid by it. I make it clear that the appellant is not entitled to get any fresh notice from the Regional Director and it shall produce the documents, if any, within two months from today. If those documents are produced, the Regional

Director shall consider those documents and pass appropriate orders in accordance with law. C.M.P.Nos.2018 of 2000 and 3280 of 2000 in M.F.A.No.319 of 2000 shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-